

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FIDEL PADILLA,

Plaintiff,

v.

CORRECTIONAL OFFICER CRUZ, et
al.,

Defendants.

No. C 10-0663 JSW (PR)

ORDER OF DISMISSAL

INTRODUCTION

Plaintiff, a California prisoner, has filed this pro se civil rights complaint under 42 U.S.C. § 1983. Plaintiff's application to proceed *in forma pauperis* is granted in a separate order. This Court now reviews the complaint pursuant to 28 U.S.C. § 1915A and dismisses the complaint as duplicative.

STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." *Id.* § 1915A(b). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.

1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

LEGAL CLAIMS

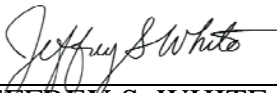
The complaint in this action is an identical copy of the in forma pauperis complaint filed in Plaintiff's earlier case, *Padilla v. Cruz, et al.*, No. 09-5782 JSW (PR), which case is currently pending. An in forma pauperis complaint that merely repeats pending or previously litigated claims may be considered abusive and dismissed under the authority of section 1915(e). *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995). An in forma pauperis complaint repeating the same factual allegations asserted in an earlier case, as here, is therefore subject to dismissal as duplicative. *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988). Accordingly, this case will be dismissed as duplicative of those in his earlier case.

CONCLUSION

For the foregoing reasons, this action is DISMISSED. The Clerk shall close the file and enter judgment in Defendants' favor.

IT IS SO ORDERED.

DATED: November 12, 2010



JEFFREY S. WHITE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

FIDEL PADILLA,

Plaintiff,

v.

CORRECTIONAL OFFICER CRUZ et al,

Defendant.

Case Number: CV10-00663 JSW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 12, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Fidel Padilla
V-72162
3234 Adeline Avenue
#1813
Berkeley, CA 94703

Dated: November 12, 2010



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk